

FILED

January 4 2011

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 07-0157 and AF 09-0688

IN RE PROPOSED RULE CHANGES TO THE
MONTANA RULES OF CIVIL PROCEDURE
AND THE MONTANA RULES OF
PROFESSIONAL CONDUCT TO ENCOURAGE
LIMITED SCOPE REPRESENTATION (LSR) IN
MONTANA.

WRITTEN COMMENT

SUBMITTED BY PATTY FAIN, STATEWIDE
PRO BONO COORDINATOR**FILED**

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

I am the statewide pro bono coordinator operating through the Office of the Court

Administrator. I was a member of the State Bar Access to Justice Committee for twelve years, serving as its Chair for three of those years. I am a member of Limited Scope Representation (LSR) sub-committee, which devoted considerable time in examining LSR issues and fashioning the proposed revisions Rules of Civil Procedure and the Rules of Professional Conduct. The proposed changes were designed to provide practical guidance to facilitate (LSR) by attorneys willing to provide such services while protecting the legal consumer (Rule 1.2(c), informed consent). Proposed changes clarify but do not relax competence rules nor are they intended to serve as a substitute for an attorney's professional judgment when assessing the appropriateness of providing limited scope services. The sub-committee's mantra continues to be that under LSR lawyers will continue to owe the same duties of loyalty, confidentiality, diligence, and competence to their limited-service clients as they do to full-service clients. The same skills are required and the client interests are just as important.

There are an estimated 250,000 unmet legal needs in Montana (see 2005 Legal Needs Study); most include low and moderate-income families and individuals – the vast majority of

the people in Montana. Clearly, demand outstrips supply. For low and moderate income clients, limited service is not a choice, but a necessity. Without it, the disenfranchised simply do not exercise their rights to access our courts and its remedies. As U.S. Supreme Court Justice Wiley Rutledge said “Equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favor or of grace or of discretion”. Necessity dictates we do something more than bar the doors to the courthouse forever. Part of the solution is in embracing innovations like LSR that protect the integrity and regard for the practice of law while promoting delivery of legal services to those who need - but cannot afford – essential legal services.

A large majority of attorneys in Montana are sole practitioners or government/public service attorneys and time is a particularly cherished commodity. LSR allows pro bono attorneys to efficiently allocate their resources, thereby increasing the potential to help more low-income people within a manageable time frame and often during the most critical juncture of a case. This combination creates new opportunities naturally leading to increased *pro bono publico* participation. LSR offers the potential for litigants to more often adequately present or defend the merits of a case expanding simple access to *meaningful* access. I dare say Montana judges may welcome the opportunity for increased confidence in decisions rendered because litigants had access to legal assistance. This increases the public’s trust and confidence in the court system and those who serve within it.

This commentator acknowledges current rules permit LSR. However, existing rules are ambiguous and do not provide appropriate structure to facilitate creation of best practices and succinct guidelines designed to protect both client and lawyer. Legal services organizations,

self-help clinics, pro bono programs together with their guiding committees - and the attorneys who populate their volunteer ranks - need a framework to begin the important job of creating LSR delivery models and educating those who serve in how to use them.

Respectfully,

Patricia L.
Fain

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